

Colleen Flynn, State Bar No. 234281
LAW OFFICE OF COLLEEN FLYNN
3435 Wilshire Blvd., Suite 2910
Los Angeles, CA 90010
Telephone: (213) 252-9444
Fax: (213) 252-0091
cflynnlaw@yahoo.com

Attorney for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ADRIAN RISKIN,

Petitioner,

vs.

HOLLYWOOD MEDIA DISTRICT
PROPERTY OWNERS ASSOCIATION,

Respondent.

Case No. BS 166075

(Judge Mary H. Strobel, Dept. 82)

PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR ORDER COMPELLING
DISCLOSURE PURSUANT TO PUBLIC
RECORDS REQUEST

Hearing Date: 11/28/17
Time: 9:30 a.m.
Dept: 82

INTRODUCTION

Respondent the Hollywood Media District Property Owners Association ("Media District BID") attempts to obfuscate its lack of compliance with the California Public Records Act ("CPRA") by personally attacking Petitioner Riskin, playing fast and loose with the facts, and misciting the law. It has failed to justify its position that its searches have been competent, complete, and reasonable and it has failed to meet its burden to justify withholding responsive documents. The Court should order Respondent to complete a new search and to produce all withheld documents or provide them to the Court for *in camera* review.

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ARGUMENT

1. Mr. Riskin's Use of the Public Records Act is in the Public Interest

Mr. Riskin publishes the documents he obtains through the CPRA on his website MichaelKohlhaas.org, "A collaborative denunciation of the Business Improvement Districts of Los Angeles." With such a title, it is no surprise that his blog posts are critical of the City's Business Improvement Districts ("BIDs"). Although the requester's motivation is explicitly irrelevant per CPRA § 6257.5, Respondent accuses Mr. Riskin of nefarious motivations due to the contents of his blog and his use of the CPRA. Its Supplemental Administrative Record, pages 0092-0142, includes 50 pages of articles from Mr. Riskin's website to which it takes offense.

Respondent's position runs counter to the First Amendment. As the Supreme Court has recognized, "debate on public issues should be uninhibited, robust, and wide-open, and ... it may well include vehement, caustic, and sometimes unpleasantly sharp attacks." *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 270. Protecting exaggerated rhetoric "provides assurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." *Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 20.

Furthermore, "there is no practical way of limiting the use of the information, once it is disclosed, to the purpose asserted by the requestor." *County of Los Angeles v. Superior Court* (2000) 82 Cal. App. 4th 819, 826, quoting *Hughes Salaried Retires v. Adm'r of Hughes* (9th Cir. 1995) 72 F.3d 686, 693.

Mr. Riskin's use of the Public Records Act, as explained more fully in the declarations below, has done a public service, increasing transparency, and benefiting the community. For example, Enrique Rivera came across Mr. Riskin's blog while working on a film about the

1 Greater West Hollywood Food Coalition (“GWHFC”). GWHFC is a charitable organization
2 located within the boundaries of the Media District BID that feeds homeless residents of Los
3 Angeles. Rivera Decl. ¶2-3. Documents published on Mr. Riskin’s website, including Media
4 District BID’s emails, board meeting minutes, security guard reports, and notes from meetings
5 with the LAPD, helped him gain a better understanding of the Media District BID’s efforts
6 against the GWHFC. *Id.* at ¶2-3, 5.

8 John Mapede, the Founding Director of the Los Angeles Poverty Department, an art
9 group for people living in Skid Row, has also found the documents Mr. Riskin has obtained from
10 the BIDs helpful. Malpede Decl. ¶2,6. Mr. Malpede began doing performance workshops with
11 Skid Row residents in 1985. From 1985 to 1989 he worked in Legal Aid Foundation of Los
12 Angeles’ Homeless Unit. *Id.* at ¶2. He, along with other individuals who participate in the Los
13 Angeles Poverty Department’s cultural activities are in favor of the creation of a Skid Row
14 Neighborhood Council that would better represent the Skid Row community. *Id.* at ¶4. Many of
15 them participated in the Skid Row Neighborhood Council elections that took place last April
16 because they wanted a government body that would increase residents’ voices in the decisions
17 being made about development and displacement in their neighborhood. *Id.* They lost the
18 election. *Id.* at ¶5. It was very upsetting for them and they were baffled. *Id.* Mr. Riskin’s research
19 using the California Public Records Act brought some transparency. *Id.* The emails that he
20 obtained from the Downtown BIDs showed that big developers and their lobbyists had organized
21 against them. *Id.* Without Mr. Riskin’s research they would not have been able to confirm who
22 was organizing against them or their motivations. It was Mr. Riskin’s work uncovering the
23 developers’ and BID’s communications that shined a light on what was going on. *Id.* at ¶6.

1 Eric Ares, Deputy Director of Finance and Communications at Los Angeles Community
2 Action Network (“LA CAN”), has also utilized the documents Mr. Riskin has obtained and
3 published on his blog for the benefit of his constituents. Ares Decl. ¶2-3. The documents have
4 assisted LA CAN in several advocacy campaigns and community-lawyering projects, including
5 litigation that focuses on protecting the civil rights of homeless and extremely low-income Los
6 Angeles residents. Ares Decl. ¶5. These documents shed light on communications between the
7 BIDs and the City regarding development, policing and other issues that affect their members.
8 *Id.*

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11 The documents Mr. Riskin has obtained from BIDs through the CPRA have even been
12 cited in the *LA Weekly*¹ and *Curbed Los Angeles*,² in articles covering the loss of the Skid Row
13 Neighborhood Council election. These publications not only cite the documents, they link
14 directly to his website. **Exhibit A*** to Riskin Decl. ¶2-3.

15
16 **2. Respondent Has Not Made a Good Faith Effort to Provide Responsive**
17 **Records**

18 **a. Respondent’s Server Issues**

19 Respondent argues it produced so few responsive emails because it had email server
20 issues caused by Ms. Schechter taking photos and emailing those large photo files to herself,
21 which used up too much server space. Schechter Decl.³ ¶2. When asked at her deposition about
22 what emails she deleted to make more space on the server, she responded with the logical answer
23 that she deleted emails with large-size attachments such as photo files. Schechter Depo. 44:3-5.

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26 ¹ Who Killed the Skid Row Neighborhood Council, *LA Weekly*, June 21, 2017,
<http://www.laweekly.com/news/how-the-skid-row-neighborhood-council-was-defeated-8326405> [as of November
13, 2017]

27 ² Who Brought Down the Skid Row Neighborhood Council: business improvement districts and some
28 developers opposed the effort, *Curbed Los Angeles*, June 21, 2017, [https://la.curbed.com/2017/6/21/15850454/skid-](https://la.curbed.com/2017/6/21/15850454/skid-row-neighborhood-council-opposition-developers)
[row-neighborhood-council-opposition-developers](https://la.curbed.com/2017/6/21/15850454/skid-row-neighborhood-council-opposition-developers) [as of November 13, 2017]

³ “Schechter Decl.” refers to Ms. Schechter’s declaration filed with Respondent’s Brief in Opposition to
the Petition; Declarations of Lisa Schechter and Jeffrey Briggs.

1 Regarding making room on the server, she was asked if she deleted “any other e-mails besides e-
2 mails with large photo files and large documents?” *Id.* at 44:6-7. She answered, “[n]ot that I can
3 remember.” *Id.* at 44:8. Conveniently, her answers have become more self-serving. She amended
4 her deposition transcript to read, “Not that I can remember *specifically, but I am sure I did.*” *Id.*
5 at 44:8 (emphasis reflects handwritten edit). Respondent now claims that the emails that Mr.
6 Riskin obtained from the City -- but which Respondent failed to produce -- regarding invitations
7 to the BID’s events, seeking meetings with City Council members, monetary assessments from
8 the City, the BID’s proposed projects, etc., are the types of emails she also would have deleted.
9
10 Schechter Decl. ¶17.

12 Respondent’s position that it would have deleted all the emails Mr. Riskin obtained from
13 the City and more is not credible and is evidence of Respondent’s failure to perform a competent,
14 complete, and reasonable search.

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16 **b. It is Not Credible That Ms. Schechter Sent Only 100 Emails in Her**
17 **First Few Months at Work**

18 Respondent also argues it produced so few emails from the requested time frame because
19 Ms. Schechter wasn’t doing much emailing during her first few months at work.⁴ Opp. at 6:7-12.
20 At her deposition she testified that from the time she began work on October 1, 2015 to
21 December 8, 2015, a little over two months, she sent “not a lot” of emails, “maybe 100.”
22 Schechter Depo. 33:16-22, Respondent’s Supp. Administrative Record at 0143; (She “sent and
23 received” approximately 100 emails during first few months at her job. Opp. at 6:11-12.) This
24 position is not credible.
25

26 ⁴ *Petitioner’s First CPRA Request -- 12/8/15:* On December 8, 2015, Petitioner requested “all emails sent to or from
27 lisa@mediadistrict.org” from her first day on the job in September 2015 to December 8, 2015.

28 *Petitioner’s Second CPRA Request -- 3/18/16:* On March 18, 2016, Petitioner requested all emails from December 9,
2015 to March 18, 2016 to or from Ms. Schechter and anyone at the domain lacity.org (and/or any of its sub-
domains) and to or from Ms. Schechter and Laurie Goldman or Kerry Morrison.

1 The responsive emails Mr. Riskin obtained from the City, but that were not produced by
2 Respondent, were from only four City entities: Council District 4, Council District 13, the City
3 Clerk, and LADOT. Riskin Decl. ¶4. With just those four entities, Mr. Schechter sent and
4 received 23 emails between October 16 and October 30, 2015, 5 emails in November 2015, and
5 18 in December 2015. *Id.* at ¶5. Of those sent in October, 14 were sent on October 29 and 30
6 alone. *Id.* at ¶5. It is implausible that she only sent and received about 100 emails over several
7 months and 14% of them were sent over a two-day period. Her back-and-forth exchanges with
8 these officials reflect no problems with her ability to send or receive email. *See* Exhibit L to the
9 Petition and Exhibit D to the Administrative Record. It defies belief that, if she emailed this
10 much with just four City entities during the requested time-period, she hadn't sent and received
11 many many more than 100 emails.

12 Respondent's position that Ms. Schechter sent and received only 100 emails in her first
13 few months of work is not credible and is evidence of Respondent's failure to perform a
14 competent, complete, and reasonable search.

15 **c. Respondent's Motive to Withhold Responsive Records**

16 Respondent argues it had no motive to withhold responsive records and it would make no
17 sense to do so considering Mr. Riskin's requests to other agencies which would bring to light
18 documents Respondent might withhold. When Mr. Riskin sent Respondent his first CPRA
19 request in December 2015, however, Respondent was unlikely unaware of Mr. Riskin's requests
20 to other agencies. In fact, Ms. Schechter was not even aware of the existence of the CPRA until
21 Mr. Riskin sent his first CPRA request in December 2015. Schechter Depo. 46:23-47:2.

22 Mr. Riskin believes Ms. Schechter violated the City's Ethics Rules by engaging in
23 "revolving door" lobbying of current City Council members and that her emails with Council
24

1 members and staff would prove such violations. Riskin Decl. ¶6. In January 2016, when
2 Respondent should have been producing responsive records, Mr. Riskin posted an article on
3 revolving door violations by Marie Rumsey, who was fined for her violations by the Ethics
4 Commission, titled “Law-and-Order-Touting Anti-Street-Vending Central City Association Flack
5 Marie Rumsey is a Hypocritical Defier of the Revolving Door Ordinance of the City of Los
6 Angeles.” *Id.* at ¶7. In February 2016, he published another article on the revolving door
7 ordinance titled “City of Los Angeles Revolving Door Law Contest!” *Id.* at ¶7. This article
8 included a list from the City of everyone who was subject to the restrictions in 2016 and invited
9 readers to search the list for violators. Ms. Schechter’s name appeared on the list. *Id.* at ¶7. It was
10 not until March 21, 2016, that Respondent produced its first substantive response. *Id.* at ¶8.

13 **3. Respondent is Unaware of What Documents It Has Produced**

14 While Respondent produced 1,553 files, most were either duplicate files or outside of the
15 requested time frame. Of the 1,553 files, only 281 are responsive to Petitioner’s requests.
16 Respondent’s response to this fact reflects an astonishing lack of understanding of what it
17 produced in response to Mr. Riskin’s two CPRA requests. Respondent appears to understand
18 “duplicates” to mean “replies” that would create email “strings.” Opp. at 8:8-20 (“anyone who
19 has used email in an office environment knows that duplicate emails and replies are exchanged
20 back and forth.”) Respondent’s attorney declares, “[l]ittle effort was made to exclude duplicates
21 because of the many email strings that included different replies and similar minor differences.”
22 Brigg’s Decl. ¶3. Respondent completely misses the point. Most of the files Respondent
23 produced are duplicates, not because they contain “replies,” email “strings,” or “minor
24 differences” but because the files themselves are duplicates, i.e., they are exactly the same as
25 other files produced.
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1 The information in a computer file can be broadly divided into two kinds. Riskin Decl.
2 ¶10. One is data, the contents of the file. *Id.* The second is metadata, which includes the name of
3 the file, the author, etc. *Id.* The duplicates Respondent produced contain bit-for-bit the exact
4 same data. *Id.* The headers, the routing information, and embedded identification codes are the
5 same. *Id.* If there are already exact copies of a file in a folder, the computer will automatically
6 rename the new copy to distinguish it from it's duplicate (ex. file.jpg, file(1).jpg, file(2).jpg. *Id.*
7 **Exhibit B*** to Riskin Decl. is a screenshot of Respondent's production, highlighting duplicate
8 files.
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11 The excessive number of duplicate files coupled with the small number of responsive
12 files produced is evidence of Respondent's failure to perform a competent, complete, and
13 reasonable search.

14 **4. Respondent Has Not Justified Its Claimed Exemptions**

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16 Respondent claims that it has found responsive documents but that they are exempt from
17 disclosure pursuant to the deliberative process privilege, Opp. at 7:11-13. Apparently trying to
18 distance Respondent from these records, it argues they are just "a few email pages on a third-
19 party's email server," Opp. at 7:11-13, conveniently ignoring the fact that *all* its emails are stored
20 on third-party's email server. This is the only information Respondent has provided about the
21 withheld documents. It has not identified how many pages, who the records are from, to whom
22 they were sent, the general topic of the documents, etc. Respondent has provided no information
23 by which the Court can determine if the agency has met its burden.
24

25 If the agency objects to disclosure, *the agency carries the burden of proof to show that*
26 *the requested records are exempt from disclosure.* § 6255. If the agency fails to carry that
27 burden, the requested record *must be disclosed.* *New York Times v. Superior Court* (1990) 218
28

1 Cal.App.3d 1579, 1586-87 (reversing trial court that failed “to place the burden on the agency to
2 justify withholding the information sought” under the Public Records Act.); *Braun v. City of Taft*
3 (1984) 154 Cal.App.3d 332, 345 (“The burden of demonstrating a need for nondisclosure is upon
4 the agency claiming the right to withhold the information.”). Furthermore, the CPRA requires
5 that exemptions to disclosure be narrowly construed so as to favor disclosure, e.g., *Citizens for a*
6 *Better Environment v. Dept. of Food & Agriculture* (1985) 171 Cal.App.3d 704, 711.

8 As Respondent has failed to meet its burden, the Court should either order the records
9 disclosed or provided for *in camera* review.

11 **5. Respondent’s Misunderstandings About the CPRA**

12 **a. Respondent Does Not Understand What Constitutes a Public Record**

13 In *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, the California Supreme Court
14 held that the CPRA requires disclosure of agency employee’s private voicemails, emails, and text
15 messages that relate to City business. Respondent confuses the Court’s definition of a public
16 record as a writing that “substantively relates” to the conduct of the people’s business with a
17 record being “substantive.” Respondent provides no citation for its contention that a record must
18 be “substantive” to be a “public record at all.” Opp at. 7:15-17.

20 Nor does Respondent appear to understand its burden. It takes the position that it
21 “certainly did not deprive Petitioner of any substantive public records for any of his purposes.”
22 Opp. at 7:19-20. It not for an agency to withhold responsive records if it does not deem those
23 records “substantive” nor is it for an agency to withhold responsive records considering what it
24 believes the requestor’s “purposes” to be. Respondent does not get to decide what is important
25 and what is a “trifle.”
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1 **b. Producing Documents That Were Not Requested Does Not Cure Failure**
2 **to Produce Requested Records And Obtaining Some Records From**
3 **Another Agency Does Not Make a CPRA Request Moot**
4

5 Respondent argues that producing “*too many* records,” Opp. at 8:8, emphasis in original,
6 where most of the records are either duplicates or outside of the requested time-frame is
7 nevertheless a “good deed,” Opp. at 8:6, and cures the failure to produce all actually responsive
8 documents. Such an argument is baseless. Furthermore, if an agency wanted to conceal records
9 that they did not want to produce, one way to do so would be to produce a large amount of non-
10 responsive records to obfuscate the fact that relevant ones are missing.
11

12 Respondent also argues that because Petitioner obtained some emails responsive to his
13 PRA requests from other sources, his petition is moot. Opp. at 11:18-19. This argument turns the
14 CPRA on its head; according to Respondent, a requestor obtaining some withheld records from
15 another source is not evidence of its non-compliance, it makes a petition moot and lets the
16 agency which fails to satisfy their statutory obligations off the hook. This argument is not only
17 baseless it is completely contrary to the California constitution which “direct[s] the courts to
18 broadly construe statutes that grant public access to government information and to narrowly
19 construe statutes that limit such access.” *Long Beach Police Officers Ass’n v. City of Long Beach*
20 (2014) 59 Cal.4th 59 subd. (b)(2)).
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26 **CONCLUSION**
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Petitioner seeks the Court's order directing Respondent to 1) conduct a new search of both its email system and paper files and disclose responsive records and 2) provide Petitioner the records it located in its most recent search or provide them to the Court for *in camera* review.

DATED: November 14, 2017

Respectfully Submitted,

LAW OFFICE OF COLLEEN FLYNN
Attorney for Petitioner

/s/ Colleen Flynn
COLLEEN FLYNN

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2 **SUPPLEMENTAL DECLARATION OF ADRIAN RISKIN**
3

4 I, Adrian Riskin, declare:

5 1. I am the Petitioner in the above action.

6 2. The June 21, 2017, *LA Weekly* article, “Who Killed the Skid Row Neighborhood
7 Council,” links to my website <http://michaelkohlhaas.org>. The article is available at
8 <http://www.laweekly.com/news/how-the-skid-row-neighborhood-council-was-defeated-8326405>.
9

10 3. The June 21, 2017, *Curbed Los Angeles* article, “Who Brought Down the Skid Row
11 Neighborhood Council: business improvement districts and some developers opposed the effort,”
12 also links to my website. The article is available at
13 [https://la.curbed.com/2017/6/21/15850454/skid-row-neighborhood-council-opposition-](https://la.curbed.com/2017/6/21/15850454/skid-row-neighborhood-council-opposition-developers)
14 [developers](https://la.curbed.com/2017/6/21/15850454/skid-row-neighborhood-council-opposition-developers).
15

16 4. **Exhibit A** to my declaration are true and correct copies of these two articles.

17 5. The emails I obtained from the City, but that were not produced by Respondent, were
18 from only four City entities: Council District 4, Council District 13, the City Clerk, and LADOT.
19 I submitted all those emails to the Court in Exhibit L to my Petition and a portion in Exhibit D to
20 the Administrative Record.
21

22 6. With just those four entities, Mr. Schechter sent and received 23 emails between
23 October 16 and October 30, 2015, 5 emails in November 2015, and 18 in December 2015. Of
24 those sent in October, 14 were sent on October 29 and 30 alone.
25

26 7. I believe Ms. Schechter violated the City’s Ethics Rules by engaging in “revolving
27 door” lobbying of current City Council members and that her emails with Council members and
28 staff would prove such violations.

8. In January 2016, I posted an article on revolving door violations by Marie Rumsey, who was fined for her violations by the Ethics Commission, titled “Law-and-Order-Touting Anti-Street-Vending Central City Association Flack Marie Rumsey is a Hypocritical Defier of the Revolving Door Ordinance of the City of Los Angeles. In February 2016, I published another article on the revolving door ordinance titled “City of Los Angeles Revolving Door Law Contest!” This article included a list from the City of everyone who was subject to the restrictions in 2016 and invited readers to search the list for violators. Ms. Schechter’s name appeared on the list.

9. It was not until March 21, 2016, that Respondent produced its first substantive response, sending me one file, consisting of one email.

10. The information in a computer file can be broadly divided into two kinds. One is data, the contents of the file. The second is metadata, which includes the name of the file, the author, etc. The duplicate files Respondent produced contain bit-for-bit the exact same data. The headers, the routing information, and embedded identification codes are the same. If there are already exact copies of a file in a folder, the computer will automatically rename the new copy to distinguish it from its duplicate (ex. file.jpg, file(1).jpg, file(2).jpg. **Exhibit B** to my declaration is a screenshot of Respondent's production, highlighting duplicate files.

Executed on November 14, 2017, in Los Angeles, California. I declare under penalty of perjury that the foregoing is true and correct.

ADRIAN RISKIN

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the county of Los Angeles, State of California. I am over the age of 18
5 and not a party to the within action; my business address is: 3435 Wilshire Blvd., Suite 2910, Los
6 Angeles, CA 90010.

7 On the date set out below, I served the foregoing document described as Petitioner's Brief
8 in Support of Petition for Order Compelling Disclosure Pursuant to Public Records Request;
9 Declarations of Colleen Flynn and Adrian Riskin on the following interested parties via:

10
11 e-mail at jbriggs@jbriggslaw.com

12 US Mail:

13
14 Jeffrey C. Briggs
15 Briggs Law
16 6464 Sunset Blvd., Suite 715
Hollywood, CA 90028

17
18 Executed on November 14, 2017 at Los Angeles, California.

19
20 I declare under penalty of perjury under the laws of the United States of
21 America and the State of California that the above is true and correct.

22
23 _____
Colleen Flynn